

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Petition of RCC Minnesota, Inc., and
Wireless Alliance, LLC, for Designation
as an Eligible Telecommunications
Carrier Under 47 U.S.C. § 214(e)(2)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

This matter came before Administrative Law Judge Kathleen D. Sheehy. Originally, the hearing was scheduled to take place February 25-28, 2003, in the Small Hearing Room of the Minnesota Public Utilities Commission. Shortly before the hearing was to begin the parties agreed to waive a hearing and to submit the matter on the written record, as described below. The record closed on April 8, 2003, upon receipt of the last post-hearing submission.

Scott J. Bergs, Leonard, Street & Deinard, P.A., Suite 2300, 150 South Fifth Street, Minneapolis, MN 55402, and David A. LaFuria, Lukas Nace Gutierrez & Sachs, Chartered, Suite 1200, 1111 19th Street, NW, Washington, DC 20036, appeared on behalf of RCC Minnesota, Inc. (RCC), and Wireless Alliance, LLC (WA) (collectively RCC).

Linda S. Jensen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, MN 55103-2106, appeared on behalf of the Department of Commerce (the Department).

Eric F. Swanson, Winthrop & Weinstine, 3200 Minnesota World Trade Center, 30 E. Seventh Street, St. Paul, MN 55101-4919, appeared on behalf of the Minnesota Independent Coalition (the MIC).

Kevin Saville, Associate General Counsel, 2378 Wilshire Boulevard, Mound, MN 55364, appeared on behalf of Citizens Telecommunications Company of Minnesota, Inc. (Citizens).

Lillian Brion appeared on behalf of the staff of the Minnesota Public Utilities Commission (MPUC or Commission).

NOTICE

Notice is hereby given that pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this report, if any, by any party adversely affected must be filed by May 2, 2003, and replies to exceptions must be filed by May 9, 2003.

Questions regarding the filing of exceptions should be directed to Dr. Burl Haar, Executive Secretary, Minnesota Public Utilities Commission, Suite 350 Metro Square, 121 Seventh Place East, St. Paul, MN 55101. Exceptions must be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 14 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's Recommendation and that said Recommendation has no legal effect unless expressly adopted by the Commission as its final order.

STATEMENT OF ISSUE

The issue in this matter is whether RCC should be designated as an Eligible Telecommunications Carrier (ETC) under 47 U.S.C. § 214(e)(2).

The Administrative Law Judge concludes that RCC should be given preliminary designation as an ETC in the proposed service area, with final designation contingent upon an adequate compliance filing as described below.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL BACKGROUND

1. On September 10, 2002, RCC and Wireless Alliance filed a joint petition for designation as an ETC with the MPUC. On September 16, 2002, RCC filed an amended joint petition.

2. On November 4, 2002, the MPUC referred the joint petition to the Office of Administrative Hearings for a contested case hearing. At the same time the Commission ordered RCC to file tariffs or price lists showing the list, prices and terms of offered services including local usage levels and calling areas for which RCC seeks universal service support, an advertising plan, and a list of facilities used to provide the services in the service area in which RCC seeks certification.^[1]

3. On November 15, 2002, pursuant to the Commission's order, RCC made a supplemental filing in support of the petition.

4. After all parties had prefiled their testimony pursuant to the schedule established in the Prehearing Order,^[2] they agreed to forgo a hearing, to waive cross-examination of witnesses, and to submit the matter on the written record.^[3] The factual record accordingly consists of the following: the joint petition for designation, as amended September 16, 2002 and supplemented on November 15, 2002; a Joint Stipulation of Facts executed by RCC and Citizens, received March 4, 2003; RCC testimony of Jim Chen (direct and rebuttal), William Finley (direct and rebuttal) Rick Ekstrand (direct) Kyle Gruis (direct and rebuttal), Don Wood (rebuttal), and Elizabeth Kohler (rebuttal); Citizens testimony of Scott Bohler (reply and surrebuttal); MIC testimony of Glenn Brown and Thomas Farm (reply, nonpublic); Commerce testimony of Katherine Doherty (amended reply, public and nonpublic, and surrebuttal). In addition, the factual record includes various responses to discovery requests designated by the parties.^[4]

5. On March 19, 2003, the Commission issued its decision in *In the Matter of the Petition of Midwest Wireless, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*,^[5] which resolved a number of the issues raised in this proceeding.

STATUTORY FRAMEWORK

6. The Telecommunications Act of 1996 is designed to open the nation's telecommunications markets to competition. Its universal service provisions are designed to keep competition from driving rates to unaffordable levels for low-income consumers and those in rural, insular, and high cost areas by subsidizing those rates. Only carriers that have been designated as eligible telecommunications carriers (ETCs) are eligible to receive those subsidies.^[6]

7. A common carrier designated as an ETC must, throughout the service area for which the designation is received, offer the services supported by federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services, and must advertise the supported services and the charges therefor using media of general distribution.^[7] While the list of designated services may change over time, the following services are currently required: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single party service or its equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation to qualifying low-income customers.^[8]

8. The Commission has the responsibility to designate ETCs in Minnesota except where it lacks jurisdiction over an applicant.^[9] The application may be evaluated based on the criteria of the Act, the FCC, and the state itself.^[10] State-imposed criteria

must be competitively neutral so as not to favor incumbents, competitors, or any particular technology.^[11]

9. Any qualified applicant is entitled to receive ETC status, provided that the applicant is not seeking to serve exchanges in which the incumbent local exchange carrier is a rural telephone company. For these areas, the state commission must make a finding that designation of more than one carrier is in the public interest.^[12] This requirement reflects Congressional concern that some thinly-populated areas might not be able to support more than one carrier.^[13]

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

10. RCC is a Commercial Mobile Radio Service (CMRS) provider that is licensed to provide cellular service in Minnesota Rural Service Areas 1-3 and 5-6.^[14] RCC has a controlling interest in Wireless Alliance, a limited liability company that is authorized to provide personal communications services (PCS) in rural areas within the Minneapolis major trading area (MTA) and St. Cloud basic trading area (BTA).^[15] RCC is authorized to provide service in most areas of Minnesota that are north of Twin Cities, with its licensed area corresponding to the following 33 counties: Aitkin, Becker, Beltrami, Big Stone, Carlton, Cass, Clearwater, Crow Wing, Douglas, Grant, Hubbard, Isanti, Itasca, Kanabec, Kittson, Koochiching, Lake of the Woods, Mahnommen, Marshall, Mille Lacs, Morrison, Normal, Otter Tail, Pennington, Pine, Red Lake, Roseau, Stevens, Swift, Toff, Traverse, Wadena, and Wilkin.^[16] RCC is a common carrier within the meaning of 47 U.S.C. § 153.

11. RCC is requesting designation as an ETC in the portions of its licensed service area for which an incumbent local exchange carrier (ILEC) is assigned. Exhibits B, C, and D to the Amended Joint Petition set forth the specific ILEC wire centers in which RCC seeks designation.^[17] Some, but not all, of these areas are served by rural telephone companies that have already been designated as ETCs. In the areas served by these rural ILECs, RCC must demonstrate that a grant of ETC status is in the public interest.

12. RCC is not seeking designation in several areas in northern Minnesota that are currently considered unserved territory and for which no incumbent LEC has been designated as an ETC.^[18] These unserved territories are in portions of Lake, St. Louis, Koochiching, and, to a lesser extent, Itasca counties.^[19]

13. RCC has provided trade secret information that describes the location of its cell sites, interconnection agreements, and switching facilities used to provide service in its licensed area.^[20] RCC meets the requirement of 47 U.S.C. § 214(e) that a carrier seeking ETC designation must offer services using at least in part its own facilities.

14. RCC intends to provide universal service through the use of both its conventional cellular offerings, which use a .6-watt handheld phone, and what it calls its basic unbundled universal service offering (BUUSO), which will use a 3-watt wireless local loop unit that simulates dial tone and provides the ability to connect to an external

antenna. The wireless local loop units also offer a variety of features, depending on the model chosen, including battery back-up, AC adapters, and the ability to connect multiple handsets to the unit. Customers may use other 3-watt phones that do not simulate dial tone.^[21] The BUUSO will operate on RCC's wireless network in the same way as any other wireless telephone.^[22]

15. RCC intends to charge a recurring flat rate of \$14.99 per month for the BUUSO, which includes unlimited local calls in a local calling area that will be approximately consistent with school district boundaries in the area in which the customer lives.^[23] RCC has not yet determined what it intends to charge customers for the wireless local loop customer premise equipment (CPE) or for installation of the wireless local loop. A customer on any of RCC's rate plans could choose to use any FCC-approved telephone.^[24]

16. No party contends that RCC fails to provide the nine supported services within the meaning of 47 C.F.R. § 54.101(a).^[25] RCC has established that it is capable of offering the supported services throughout the proposed ETC service area by installing new cell sites; using repeater technology, high-gain (Yagi) antennas, or mini-antennas; adjusting technical parameters at existing cell sites; and reselling the services of other carriers.^[26] The evidence supporting this finding is summarized briefly below.

17. **Voice Grade Access to the Public Switched Network.** Voice grade access is the ability to make and receive phone calls within a bandwidth of 300 and 3000 Hertz.^[27] Through interconnection arrangements with local exchange carriers, RCC provides all its customers with the ability to make and receive calls within the prescribed frequency range. RCC meets this requirement.

18. **Local Usage.** The FCC requires that a universal service offering include some (as yet unspecified) minimum level of local usage, which is defined as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users."^[28] RCC has two service plans that provide unlimited local usage: the BUUSO, which provides unlimited usage in the area approximating the school district serving the customer's city; and the "My Zone" plan, which provides unlimited usage in Minnesota, North Dakota, South Dakota, and the 715 area code of Wisconsin.^[29] RCC has several other active service plans that have varying home and local calling areas. RCC has also committed to comply with any and all minimum local usage requirements adopted by the FCC.^[30] RCC meets the local usage requirement.

19. **Dual tone multi-frequency signaling or its functional equivalent.** Dual tone multi-frequency (DTMF) signaling is a method of signaling that facilitates the transportation of signaling throughout the network, shortening call set-up time. RCC's network uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.^[31] RCC has satisfied this requirement.

20. **Single party service or its equivalent.** Single party service means that only one party will be served by a subscriber loop or access line in contrast to a multi-

party line.^[32] RCC provides a dedicated message path for the length of all customer calls^[33] and satisfies this requirement.

21. **Access to emergency services.** RCC provides its customers with access to emergency service by dialing 911, and it has complied with all applicable E-911 regulations. Phase 1 E-911 enables customers to dial 911 to reach the public service answering point (PSAP) and have a call directed to the appropriate emergency service provider, and also provides the PSAP with the caller's phone number by use of automatic number identification and automatic location information. Phase 2 E-911 will provide enhanced location information. Of the counties served by RCC, 17 are phase 1 E-911 compliant, and in the remainder RCC is awaiting information or the completion of upgrades by a third party. RCC has established that it complies with all current FCC requirements and commits that it will comply with all future requirements. RCC satisfies the requirement of providing access to emergency services.

22. **Access to operator services.** RCC customers may obtain access to operator services by dialing 0 or 411.^[34] RCC satisfies this requirement.

23. **Access to interexchange services.** RCC provides customers with the ability to access interexchange services through interconnection arrangements that RCC has with several interexchange carriers. RCC's customers may access the interexchange carrier of their choice by use of calling cards, pre-paid cards, and by dialing the toll-free numbers provided by interexchange carriers. RCC satisfies this requirement.

24. **Access to directory assistance.** RCC provides its customers with access to directory assistance by dialing 411 or (NPA) 555-1212.^[35] RCC satisfies this requirement.

25. **Toll limitation to qualifying low-income customers.** RCC currently provides toll blocking services for international calls, 900 number calls, and others, and states it will use this same technology to provide a toll blocking service free of charge to its Lifeline customers. RCC meets this requirement.

ADVERTISING THE SUPPORTED SERVICES

26. An ETC must advertise the availability and prices charged for the services that are supported by federal universal service support using media of general distribution.^[36] It must also publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.^[37] RCC maintains that upon designation it intends to advertise in newspapers within its designated service areas in Minnesota and in bill inserts to existing customers. In its supplemental filing, RCC provided an estimated annual advertising budget and a sample print advertisement.^[38]

27. The Department maintains that RCC has not provided sufficient detail regarding its specific plans to advertise the BUUSO and the availability of Lifeline and Link-up. The Department maintains that, prior to final approval, RCC should be required to fully disclose its advertising plans. The same type of advertising plan was required of Midwest Wireless.

28. The Department's position is reasonable, and RCC does not object to providing the requested information in a compliance filing.^[39] Contingent upon the adequacy of its compliance filing, RCC has demonstrated that upon designation it will advertise the supported services.

THE PUBLIC INTEREST

29. When a carrier is seeking designation as an ETC in exchanges where the incumbent LEC is a rural carrier, state commissions are charged with determining whether an additional designation is in the public interest.^[40] Some of the exchanges in which RCC seeks designation are served by incumbents that are rural carriers, so a public interest finding is necessary before RCC may be designated as an ETC.

30. Federal law allows the FCC to perform ETC designations when the carrier seeking designation is not subject to the jurisdiction of a state commission.^[41] In those cases involving rural carriers, the FCC makes a public interest determination in the same manner that a state commission would. The FCC has typically analyzed the public interest factor by examining whether consumers are likely to benefit from increased competition; whether designation of an ETC will provide benefits not available from incumbent carriers; and whether consumers would be harmed should the incumbent carrier exercise its option to relinquish its ETC designation under § 214(e)(4).^[42]

31. RCC currently serves approximately 55,000 customers in northern Minnesota. Although RCC has been successful in obtaining conventional cellular customers, it does not currently compete in any substantial way for basic local exchange service.^[43] RCC maintains that its designation as an ETC would provide the support necessary to allow RCC to provide the BUS service and to enhance its network so that it can compete for basic local exchange service. The benefits of competition are generally presumed to be increasing customer choice, providing new services made possible by wireless technologies, and allowing rural consumers to choose service, as do consumers in urban areas, based on size of local calling area, amount of local calling, price, service quality, customer service, and service availability. Competition would allow customers increased access to emergency services and would create incentives for both competitors and incumbents to make infrastructure investments that should ensure that quality services are available at just, reasonable, and affordable rates.

32. RCC has committed to use all universal service funds it receives only for the provision, maintenance, and upgrading of facilities and services for which the

support is intended.^[44] Specifically, RCC has committed to using universal service support to improve its coverage and increase the availability of services to unserved or underserved areas. With USF funds, RCC has proposed building 15 cell sites in high-cost areas that would otherwise remain low on its capital expenditure priority list, some near the communities of Ely, Two Harbors, Grand Rapids, Little Falls, Long Prairie, Wadena, Park Rapids, Thief River Falls, and Roseau.^[45] In addition to the direct benefit of expanded calling capacity, RCC anticipates that in the near future, the facilities used to provide the nine supported services will be able to deliver wireless Internet access, wireless high-speed Internet access, and other new services utilizing advanced technologies.^[46]

33. RCC intends to offer the BUUSO at a recurring rate of \$14.99, which is affordable. Nonetheless, the Department and MIC contend that RCC has failed to establish the affordability of the offering because it has not yet disclosed all the terms and conditions, such as the cost of CPE and installation charges. The Department contends that final approval of RCC as an ETC should be contingent upon an adequate compliance filing that discloses all rates, terms, and conditions applicable to the BUUSO, including customer premise equipment options and charges, and installation charges. RCC does not object to making such a compliance filing and states that it “appreciates the [Department’s] concerns about making the service and the CPE affordable to low income consumers” and that it fully intends to provide terms and conditions that resolve those concerns.^[47]

34. This is not a minor concern. The BUUSO and the 3-watt equipment that goes with it are critical to RCC’s ability to provide service throughout its designated service area, at least until many more cell sites are constructed. Without it, RCC cannot hope to compete effectively for local exchange service because the coverage for conventional .6-watt phones is insufficient to provide reliable service.^[48] The availability of this equipment to all consumers, not just low-income consumers, relates directly to the public interest issue of whether consumers are likely to receive the benefits of increased competition.^[49] RCC should be required to disclose all terms and conditions relating to the BUUSO. Until it does so, RCC cannot establish that ETC designation should be granted.^[50]

35. Subject to RCC making a satisfactory compliance filing, the record as a whole supports the proposition that consumers in Minnesota would receive the usual benefits of competition should RCC be designated as an ETC. RCC offers a choice of providers, features, local calling areas, usage amounts, and prices.^[51] Increased investment in rural infrastructure would improve access to emergency services and provide access to new and innovative services, including the potential for high-speed wireless Internet access in northern Minnesota, delivered over the same facilities used to provide the supported services. There is no evidence that designation of RCC would harm consumers or that the local service market in any exchange is insufficient to support competitive entry. As the fund is currently structured by the FCC, no ILEC will lose high-cost universal service support as a result of a competitor’s designation as an ETC. There is no evidence that any ILEC would likely relinquish its carrier of last resort

obligations. In short, there does not appear to be any reason on this record to deprive consumers in northern Minnesota of the potential benefits of competition.

Affordability

36. MIC maintains for a number of additional reasons that RCC's designation as an ETC is not in the public interest. First, it contends that "the majority of RCC's standard mobile plans do not advance the universal service goal of providing local service at affordable rates." This is not a requirement of the Act or the rules governing this process. The Act requires that a carrier "offer" the supported services; it does not require that every service plan provide for unlimited local service or be priced comparably to the ILEC's rate for local service. Furthermore, the premise of the funding mechanism is that, with USF support for all eligible lines, a competitor will be able to enhance its network to the point where it will be able to compete for local exchange service, and that when competition is achieved, competition will ensure that rates--of competitors and ILECs--are affordable and service quality is high.^[52]

Impact on the Federal Universal Service Fund

37. MIC also maintains that the costs of designating RCC as an ETC are excessive when compared to the benefits likely to be achieved. If the FCC determines that all of RCC's lines are eligible, RCC would receive between \$9 and \$10.6 million per year in universal service support.^[53] Multiplying this number by the total number of CMRS lines in Minnesota, and in the country, MIC contends that future costs could be as much as \$55 million in Minnesota, or \$2 billion nationwide. This is a "floodgates" argument; MIC is essentially arguing that it will be expensive to subsidize competitors in high-cost rural areas, even though the Act explicitly requires it if competitors meet the criteria. It offers no principled basis for designating any one carrier as opposed to another. The FCC has held that arguments concerning the financial impact on the universal service fund are not relevant in a proceeding to designate a particular carrier.^[54] The FCC has initiated a proceeding to re-consider how universal support is distributed. To the extent that these issues warrant further review, they will be addressed and remedied holistically in the federal docket.^[55] Even if it were relevant, designation of RCC as an ETC in Minnesota would have a minimal impact on the federal fund and would not constitute a public cost that would outweigh the benefits of competition. As the Commission has pointed out, rate payers indirectly have contributed to the fund and are entitled to reap any possible benefits from it.^[56]

Network Inefficiencies and Need for ETC Designation

38. MIC further contends that competitive entry will cause customer density in remote areas to decline, which causes a corresponding increase in ILEC per-line costs. The FCC was well aware of this issue when it declined to freeze per-line support in rural carrier study areas, and this is part of the FCC's on-going proceeding to re-examine the distribution of universal service support.^[57] This is not a reason to deny a carrier's application for ETC designation. In a similar vein, MIC contends that the costs of

serving new customers, assuming RCC builds the cell towers it has proposed to build, are excessive and not economically efficient. MIC's evidence understates the number of customers that could be served from RCC infrastructure improvements and correspondingly overstates the costs of serving new customers.^[58] More fundamentally, this argument suggests that there should never be more than one ETC in remote, high-cost areas, a suggestion completely at odds with the Act.

39. MIC also contends, based on RCC's line counts, that RCC is successfully competing (evidenced by the fact that 22% of ILEC customers also take a wireless product from RCC) and that RCC needs no universal service subsidies in order to compete. This is not evidence of competition for local service. There is no evidence that RCC or any other wireless carrier has taken customers away from an ILEC. As RCC points out, there are companies providing paging, two-way radio, CB radio, and satellite service to ILEC customers, but they are not competing for local service either. MIC's argument is factually unsupported.

40. Citizens contends, in contradiction to MIC, that most of RCC's customers have both conventional cell phones and land lines, that this purchasing pattern will continue into the future, and that designating RCC as an ETC will not enhance competition, but will only serve to increase the number of households that have both cellular phones and land lines. This argument is premised on the assumption that competition for local service will never take place, no matter how much support is given to competitors to enhance their networks. On the contrary, the evidence supports the proposition that RCC, through use of the BUUSO and other network enhancements made possible through receipt of universal service funds, should be able to compete for basic service and that at some point customers will be able to choose between wireless phones and land lines for the provision of local service.

Limiting Designation to BUUSO

41. MIC further contends that RCC's designation should be limited to the BUUSO as a public interest matter because its other conventional cellular plans fail to provide local usage. MIC's argument is inconsistent with federal law. The FCC does not require that all of an ETC's calling plans offer unlimited or any set amount of local usage. The FCC requires only that the ETC "offer" local usage.^[59] Furthermore, ETC status is awarded to a carrier, not to a carrier's individual rate plans.^[60] A competitive ETC "shall" receive universal service support to the extent that it captures an ILEC's subscriber lines *or* serves new subscriber lines in the incumbent LEC's service area.^[61] A competitive ETC serving loops in the service area of a rural incumbent "shall" receive support "for each line it serves" in a particular service area, based on the support the incumbent would receive.^[62] In considering ETC petitions, the FCC has never examined individual rate plans beyond determining that a carrier offered local usage, and it has never qualified only certain rate plans that offer certain amounts of local usage. In *Midwest Wireless*, the Commission agreed that there is no legal basis for limiting designation to one service plan.^[63]

Dead Spots in Service Area

42. Citizens maintains that it would not be in the public interest to designate RCC as an ETC because it lacks facilities in the remote and rugged areas of the service territory^[64] and cannot provide reliable assurances of how it will accomplish the provision of service in these areas or what its timetable would be for enhancing its existing network to provide the required service there. Citizens maintains that the Commission should require RCC to commit to a timetable for providing service in remote areas, arguing that LECs have been required to do so. The Commission concluded, in *Midwest Wireless*, that this requirement would be discriminatory as ILECs are not subject to any such timetables.^[65] A carrier requesting ETC status is not required to provide ubiquitous service at the time of its application. The issue is whether RCC is capable of following through on its commitment to provide universal service upon request in the future, should it receive ETC designation and universal service support funds. RCC has committed to provide service throughout its proposed service area, and given the facilities it does have in place, its commitment to provide service is sufficient for the purpose of granting ETC designation.

43. Citizens also maintains the Commission should explicitly require RCC to comply with Minn. R. 7810.2800, which requires telephone utilities subject to the Commission's jurisdiction to document when they are unable to provide service within 30 days of a customer's request. Pursuant to this rule, the Commission is authorized to establish a priority plan for clearing held orders. Although some kind of tracking requirement might be reasonable, if applied to all ETCs, it is not clear that 30 days would be a useful time frame for a carrier that has yet to receive the support funds necessary to improve its network. Furthermore, issues concerning the number, placement, and operation of cell towers and other infrastructure are subject to exclusive federal regulation.^[66] The Administrative Law Judge does not recommend that the Commission apply Minn. R. 7810.2800 to RCC because of the likelihood that the rule would be considered pre-empted by 47 U.S.C. § 332(c)(3)(A).

44. Citizens also contends that there is no way to require RCC to construct facilities to serve these areas, and that RCC will be free to use universal service funds to offset its current costs. MIC makes a similar argument that after receipt of universal service funds, wireless companies will be free to focus on marketing more lucrative plans that are not, in its view, affordable. The Act requires all ETCs to certify that funds will be used for the "provision, maintenance, and upgrading of facilities and services for which support is intended."^[67] Although Citizens and MIC disagree, the FCC has determined that the certification procedures are sufficient and that additional criteria beyond those set forth in § 214(e) were not necessary to prevent competitive carriers from attracting only the most profitable customers, providing substandard service, or subsidizing unsupported services with universal service funds.^[68] Any carrier that fails to use universal service funds for those purposes would most certainly risk losing its ETC status.

Service Quality Issues

45. The Department maintains that before receiving final approval, RCC should be required to disclose its customer service and dispute resolution policies, network maintenance (including policies and procedures for service quality, for addressing service interruptions and requests for service, and any customer remedies offered), billing and payment of charges, and deposits. The Commission recently required Midwest Wireless to make the same disclosures. RCC does not oppose the compliance filing requested by the Department.^[69] It is reasonable to require these disclosures, and RCC should be required to make them.

46. Subject to a satisfactory compliance filing as indicated above, RCC has established that its designation as an ETC is in the public interest. Designation of RCC as an ETC is also consistent with the state goals articulated in Minn. Stat. § Minn. Stat. § 237.011 of supporting universal service, maintaining just and reasonable rates, encouraging economically efficient deployment of infrastructure, encouraging fair and reasonable competition for local exchange service in a competitively neutral regulatory manner, maintaining or improving quality of service, promoting customer choice, and ensuring consumer protections in a competitive market.

DESIGNATION IN UNSERVED AREAS

47. Citizens argues that if RCC is designated as an ETC in the areas it has requested, the Commission also should order RCC to provide universal service in the unserved areas of Koochiching, Lake, St. Louis, and Itasca counties, where no incumbent has been assigned as an ETC. If no common carrier will provide the supported services to an unserved community that requests them, the Commission may order a common carrier to provide the services after examining “which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof.”^[70] There is neither a procedural nor a factual basis for making such a determination in this proceeding.

SERVICE AREA REDEFINITION

48. RCC has requested that the Commission redefine the service areas of the rural ILECs in the territory in which it operates to conform to its licensed service area, except in unassigned areas for which no ETC has yet been assigned. A service area is a geographic area established by a state for the purpose of determining universal service obligations and support mechanisms.^[71] Redefinition of a rural telephone company’s service area requires the state commission’s approval. The FCC has directed state commissions to consider three factors in considering whether to disaggregate a rural telephone company’s service territory: (1) the risk of cream skimming, which would occur if a competitive ETC were to target only the low-cost portions of an exchange; (2) the regulatory status accorded rural telephone companies; and (3) any additional administrative burdens that might result from disaggregation.^[72]

Once approved, a state commission must petition the FCC to disaggregate the service area as requested.

49. RCC proposes that the affected rural ILEC service areas be redefined so that each ILEC wire center is classified as a separate service area. RCC also seeks disaggregation below the exchange level in the following exchanges:

50. Most Minnesota telephone companies, including Citizens, have elected to disaggregate their own service areas down to the exchange level for universal service purposes, and even to subdivide their exchanges into cost zones.^[73]

51. There is no evidence that RCC is attempting to “cream-skim” the low cost areas of these exchanges, nor is there any evidence that requiring disaggregation below the exchange level would result in any significant additional administrative burden or affect the special regulatory status of any rural telephone company.

52. Citizens maintains that there is a risk of customer confusion, because wireless companies and ILECs have different local calling areas. The Commission has characterized the risk of confusion as minimal because customers are generally aware that a cellular phone may have a different calling scope than a landline phone^[74]; and if there is a risk, it would exist whether or not RCC obtains ETC designation. That RCC may obtain more customers for local service upon designation as an ETC does not materially influence the risk of confusion.

53. The service area redefinition proposed by RCC is reasonable and should be adopted.

COMPLIANCE FILING

54. RCC should be required to submit a compliance filing for Commission review and approval that is similar to that required of other ETCs:

- (a) information typically gathered from ETCs in the annual certifications;
- (b) information on rates, terms, and conditions applicable to the BUUSO, including customer premise equipment options and charges;
- (c) an advertising plan;
- (d) an informational tariff with terms and rates for the BUUSO, with Lifeline and Link Up and other services which may be added to a universal service offering;

- (e) a customer service agreement with customer service and dispute resolution policies, network maintenance policies with procedures for resolving service interruptions and any customer remedies, billing and payment and deposit policies; and
- (f) a list of the Company's federal obligations regarding its service area.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

1. The petitioners should receive preliminary designation as an ETC in the proposed service area in Minnesota, with final approval contingent upon a satisfactory compliance filing;
2. If final approval is granted, the MPUC should petition the FCC to disaggregate, for ETC purposes, the service areas of the relevant incumbent telephone companies to the extent necessary to permit RCC to obtain designation as requested in its licensed service area; and
3. If final approval is granted, the MPUC should certify its designation of RCC as an ETC with the FCC pursuant to 47 C.F.R. § 54.314(a).

Dated: April 21, 2003

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

Many of the arguments advanced against designating RCC as an ETC are not specific to RCC itself or to the area in which it seeks designation, but reflect the proponents' basic disagreement with the statutory provisions making universal service funds available to competitors or with the manner in which the FCC has structured the fund mechanism. MIC and Citizens have advocated repeatedly in their briefs that the Commission should not "shirk" its duty and should resist the temptation to "defer" to the FCC in evaluating whether designation of RCC is in the public interest. When the FCC has spoken in an area that is within its provenance, following its direction cannot reasonably be characterized as shirking a duty or paying it undue deference. When the FCC has said that certain factors are or are not relevant in evaluating a particular carrier's petition to be designated as an ETC, a state is not free to disregard those

words in the name of the public interest, even though the state itself is charged with making the public interest determination.

K.D.S.

^[1] *In the Matter of the Petition by RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Docket No. P-573/AM-02-686, ORDER REQUIRING ADDITIONAL FILING, VARYING TIME PERIOD AND NOTICE AND ORDER FOR HEARING (November 4, 2002).

^[2] Prehearing Order, November 14, 2002.

^[3] Letter from Scott J. Bergs to ALJ dated February 24, 2003.

^[4] RCC Responses to DOC Information Request Nos. 4, 12-13, 15-17, 23-26, and 35-46; RCC Responses to Citizens Information Request Nos. 2-19; RCC Responses to MIC Information Request Nos. 2-4, 15, 20, 23, and 25; MIC Responses to RCC Information Request Nos. 1-10; and Citizens Responses to RCC Information Request Nos. 3-5.

^[5] *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, PUC Docket No. PT-6153/AM-02-686, ORDER GRANTING CONDITIONAL APPROVAL AND REQUIRING FURTHER FILINGS (March 19, 2003) (*Midwest Wireless Order*).

^[6] 47 C.F.R. § 54.201(a).

^[7] 47 U.S.C. § 214(e)(1).

^[8] 47 C.F.R. § 54.101(a).

^[9] 47 U.S.C. § 214(e)(6).

^[10] *Texas Office of Pub. Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Midwest Wireless Order* at 3.

^[11] 47 U.S.C. § 254(b)(7); 47 C.F.R. § 54.201(h); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Report and Order, 12 FCC Rcd 8776, 8801-03 ¶¶ 46-51 (*USF First Report and Order*); *Midwest Wireless Order* at 3.

^[12] 47 U.S.C. § 214(e)(2).

^[13] *Midwest Wireless Order* at 3.

^[14] Amended Joint Petition ¶ 5.

^[15] *Id.*

^[16] *Id.* at ¶ 6.

^[17] There is a map in the record that depicts RCC's licensed area (Ex. A to the Joint Amended Petition), but there is no map that depicts geographically the specific areas for which RCC seeks ETC designation. The only source for this information is the list of exchanges in Exhibits B, C, and D to the Amended Joint Petition.

^[18] Joint Stipulation of Facts ¶ 1.

^[19] Bohler Reply, Ex. 2. Ex. 2 is a map that depicts the unassigned areas in Lake, St. Louis, Koochiching, and Itasca counties.

^[20] Supplemental Filing Attachments F, G, and H.

^[21] Gruis Direct at 5. RCC identified one such model as the CSI Wireless brand, Base One model, with antenna, handset, AC/DC adapter, and an antenna connector for optional external antenna. Gruis Rebuttal at 1-2.

^[22] Gruis Direct at 5.

^[23] Supplemental Filing Attachments A & B.

^[24] Gruis Rebuttal at 2.

^[25] Citizens argues that RCC lacks facilities in remote areas that correspond to certain of Citizens' exchanges, but it does so as part of a cost/benefit analysis of the public interest factor, contending the benefits of designating RCC as an ETC would be minimal in these areas. Citizens does not argue that RCC fails to meet the requirements of 47 C.F.R. § 54.101(a).

^[26] Gruis Direct at 7.

^[27] 47 C.F.R. § 54.101(a)(1).

[28] 47 C.F.R. § 54.101(a)(2).
[29] Supplemental Filing Attachment A. The “My Zone” plan is offered for \$32.95 per month.
[30] Gruis Direct at 2.
[31] *Id.*
[32] 47 C.F.R. § 54.101(a)(4).
[33] Gruis Direct at 3.
[34] Gruis Direct at 4.
[35] *Id.*
[36] 47 U.S.C. § 214(e)(1)(B).
[37] 47 C.F.R. § 54.405(b); *id.* § 54.411(d).
[38] Supplemental Filing Attachments C & D.
[39] RCC Reply Brief at 1 n. 1.
[40] 47 U.S.C. § 214(e)(2).
[41] *Id.*
[42] See *In the Matter of Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, Memorandum Opinion and Order ¶¶ 22-25 (Nov. 26, 2002) (*RCC/Alabama ETC Order*).
[43] Finley Direct at 5; Kohler Rebuttal at 10.
[44] Ekstrand Direct at 1-2.
[45] Supplemental Filing Attachment G.
[46] Gruis Direct at 8.
[47] RCC Reply Brief at 11-12.
[48] Gruis Direct at 6 and Ex. A (red areas of map illustrating coverage for handheld phones, blue indicating coverage for 3-watt phones).
[49] In *Midwest Wireless*, the record indicated that such equipment might cost between \$350 and \$500. There, however, the company committed to leasing the equipment to customers for no more than \$5 per month, on the basis that it wanted to keep its total monthly recurring charges at about \$20 in order to compete effectively with ILEC rates.
[50] Requiring this information of RCC is not regulation of rates or entry that is pre-empted under 47 U.S.C. § 332(c)(3)(A). RCC is not being told what rate should be charged for this service, or what service has to be provided for the rate it has selected. This disclosure is required for the purpose of determining whether consumers are likely to receive the benefits of increased competition.
[51] Finley Direct at 3-4.
[52] *RCC/Alabama ETC Order* at ¶¶ 22-25.
[53] This amount represents one third of one percent of the high-cost portion of the fund. See Farm Reply at 6.
[54] See *RCC/Alabama ETC Order* ¶ 3.
[55] *Midwest Wireless Order* at 11.
[56] *Id.*
[57] *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking ¶¶ 207-09 (May 10, 2001).
[58] Gruis Rebuttal at 3-4.
[59] 47 U.S.C. § 214(e)(1)(A).
[60] *Id.* §§ 214(e)(1), (2).
[61] 47 C.F.R. § 54.307(a).
[62] *Id.* § 54.307(a)(1).
[63] *Midwest Wireless Order* at 5.
[64] Citizens refers specifically the Crane Lake, Tower, Embarrass, Aurora, Palo, Hoyt Lakes, Babbitt, Ely, Brimson, Two Harbors, and Isabella exchanges.
[65] *Midwest Wireless Order* at 5-6.
[66] 47 C.F.R. §§ 24.103, 24.132, 24.232; *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983, 989 (7th Cir. 2000).
[67] 47 U.S.C. § 254(e); 47 C.F.R. § 54.7.

^[68] *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order ¶¶ 12-13 (Dec. 22, 2000).

^[69] RCC Reply Brief at 1 n. 1.

^[70] 47 U.S.C. § 214(e)(3); 47 C.F.R. § 54.203(a); Minn. Stat. §§ 237.081, 237.16; Minn. R. 7811.1400, subp. 13.

^[71] 47 U.S.C. § 214(e)(5).

^[72] See *Joint Board Recommendation*, 12 FCC Rcd at 179-80 ¶¶ 172-74.

^[73] *Midwest Wireless Order* at 14.

^[74] *Id.*